

EXAMINER INTERVIEW

Applicants would like to thank the Examiner for the courtesies extended during the phone conference of April 28, 2008. While no agreement was reached as to the patentability of the claims, it was agreed the discussed amendments overcome the art of record.

REMARKS

Claims 1, 2, 4-10, 12, 16-21, and 23-45 are now pending in the application, of which Claim 39 has been withdrawn from consideration. Claims 1, 2, 4-10, 12, 16-21, 23-38 and 40-45 stand rejected. Claim 12 has been cancelled. Claims 1, 9, 16, 20, 32, 36, and 45 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claim 12 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 12 has been cancelled, thus obviating the rejection.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1, 2, 4-8, 16-19, 32-38, and 40-45 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kohrs et al. (U.S. Pat. No. 6,224,631). In view of the amendments and arguments herein, this rejection is respectfully traversed.

While Applicants submit the Kohrs reference does not teach the functional limitations as claimed, Applicants, in an effort to expedite prosecution, have amended the claims consistent with the discussions with the Examiner. In this regard, applicants have amended the claims to further structurally distinguish over the cited references.

The Examiner's attention is directed to Claim 1. Claim 1 has been amended to include the limitation that the implant defines at least one locking surface and that the generally u-shaped fastener has first and second members and the first member is disposed within one of the channels. Claim 1 has been further amended to include the limitation that the first member defines a second locking surface which is engaged with a locking surface of the implant. Applicants submit this limitation is not shown in the references.

With respect to the rejection of Claim 16, the Examiner's attention is directed to Claim 16 which has been amended to include the limitations that the staple has a locking surface engaged with a surface of the staple accepting channels thereby restricting linear movement of the staple along an axis of one of the channels of the pair of longitudinal staple accepting channels and with respect to the implant. Applicants respectfully submit the references cited by the Office do not disclose this limitation.

With respect to the rejection of independent Claim 32, the Examiner's attention is directed to Claim 32 which has been amended to include the limitation "engaging the locking surface of the staple with a surface of the implant so as to restrict linear movement of the staple in a first direction along the slot axis and with respect to the implant." Applicants submit none of the references disclose this limitation.

Claim 36 has been amended to include the limitation "coupling the fastener to the channel so as to prevent linear translation of the staple along the channel axis with respect to the implant." Applicants respectfully submit that each of the structures cited by the Examiner is translatable with respect to the implant and is not coupled so as to prevent translation of the staple with respect to the implant. As such, rejection of the afore discussed claims is improper.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 9, 10, 12, 20, 21, and 23-31 stand rejected under 35 U.S.C. § 103 as being anticipated by Jackson (U.S. Pat. No. 6,835,206; hereinafter "Jackson '206") in view of Jackson (U.S. Pat. No. 6,440,170; hereinafter "Jackson '170"). This rejection is respectfully traversed.

With respect to the rejection of Claim 9, the Examiner's attention is directed to Claim 9 which has been amended to include the limitation that the staple includes an upward locking surface engaged with the anchoring locking surface of the implant "so as to restrict translation of the staple in a first direction along a longitudinal axis of one channel of the pair of longitudinal channels." Applicants respectfully submit that none of

the references cited by the Examiner teaches this limitation. As such, each of the references alone or in combination, does not meet the limitations of Claim 9.

The Examiner's attention is directed to Claim 20 which has been amended to include the limitation "fixably coupling the staple to the first and second longitudinal channels so as to restrict movement in a first direction along a first channel longitudinal axis." Applicants submit that none of the references discloses this limitation. Applicants note Claim 20 further contains the limitation "whereby the staple bindingly engages both the implant and a surface defining the bone aperture." Applicants submit this limitation is not shown in the references cited.

For these and the reasons cited above, Applicants submit the references do not teach the limitations as claimed. As such, Applicants submit the rejection under 35 U.S.C. § 103 is improper.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: R.W. Warner
Richard W. Warner, Reg. No. 38,043
Christopher A. Eusebi, Reg. No. 44,672

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

CAE/lf-smb